

# Montana State Legislature

## **2013 Session**

### **ADDITIONAL DOCUMENTS MAY INCLUDE THE FOLLOWING:**

- **Business Report**
- **Roll Call – Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports etc.**
- **Roll Call Votes**
- **Informational Items**
- **Witness Statements**
- **Any Documents; such as;**
  - \***Petitions if any.**
  - \***Any and all material handed end after the meeting ends.**

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**BUSINESS REPORT**

**MONTANA SENATE  
63rd LEGISLATURE - REGULAR SESSION**

**SENATE EDUCATION AND CULTURAL RESOURCES COMMITTEE**

**Date:** Friday, March 15, 2013  
**Place:** Capitol

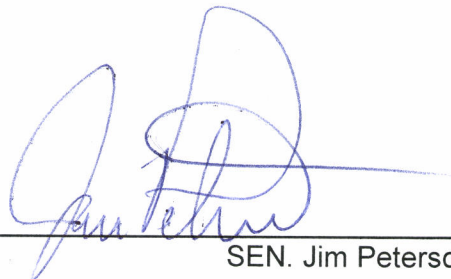
**Time:** 3:00 PM  
**Room:** 303

**BILLS and RESOLUTIONS HEARD:**

SB 374 - Establish public charter schools - Sen. Dave Lewis

**EXECUTIVE ACTION TAKEN:**

**Comments:**



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SEN. Jim Peterson, Chair

## 4

DATE:

[illegible]



**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE EDUCATION AND CULTURAL RESOURCES COMMITTEE**

**Friday, March 15, 2013**

**SB 374 - Establish public charter schools**

**Sponsor: Sen. Dave Lewis**

**PLEASE PRINT**

Name	Representing	Support	Oppose	Info
Debra Hamm	Montana Family Foundation	X		
Dan Nicklase	ID. Charter Schools	X		
Lisa Russell	Self	X		
Dwight Monroe	Montana Native Veg		X	
Theresa Hall	SELF	X		
Erin J	MSA WFT		o	
Diane Flaam	MEA-MET		o	
Jim Smith	MREA	<del>X</del>	X	
Dan Rask	MSSA		X	
Patrick McLean	Grandfather	X		
Henry Krieger	Am Fox PGP-MT	X		
Neidi Roedel	self	X		
LESLIE HINER	FRIEDMAN FOUNDATION			X
Lynette Wobyls	Medicine Wheel Model	X		
Shirley HERRIN	SELF	X		
LaVerne Whitebear	Helena Indian Alliance	X		
Jeremy Red Eagle	Helena Indian Alliance	X		
Wasiin Naytha Ragged Rope	medicine wheel model	X		
Sabrina Xupae	medicine wheel model	X		
Cheryl White	" " "	X		
Elaine Herman	Eagle Forum	✓		
Elaine Herman	self	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

LANCE MELTON

MTSBA

Linda Gryczan

MT Women's Lobby

X

X



**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE EDUCATION AND CULTURAL RESOURCES COMMITTEE**

**Friday, March 15, 2013**

**SB 374 - Establish public charter schools**

**Sponsor: Sen. Dave Lewis**

**PLEASE PRINT**

Name	Representing	Support	Oppose	Info
Dennis J Parman	OPI		X	
Joni Motloy	Governor's Bellick		X	
Kirk Mullis	SAM		X	
Mark Lambrecht	MAEC		X	
Verdell Jackson	my self	X		
Cristie FitzGerald	self	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

**ADDITIONAL  
DOCUMENTS**

Senate  
Educational & Cultural Resource  
Committee

Re: SB 374

Fax 406-444-4875

From: Sue Kopka  
Ovando, MT 59854

3 pages including cover

Nadene suggested  
putting a copy at  
each of the committee  
member's place.

Joyce

*Senate Education and Cultural Resources Committee*

From: Sue Lapka <sjlapka@blackfoot.net>  
Subject: **Charter Schools**  
Date: March 15, 2013 8:46:13 AM MDT  
To: ~~Mom Mom~~ <sjlapka@blackfoot.net>

Dear Mr. Chairman, Members of the Committee,

I would like to offer this letter in favor of the SB 374.

I have a long background in being involved in education. I have served on a local school board for twelve years. I have overseen my 13 children through grade school, high school, and college. I have had my children in public schools, private schools, and I have home schooled.

I believe that there need to be choices for parents. All children are not the same. They have different learning styles, special needs, gifted needs, cultural needs. These needs may or may not be met by the local school. Parents need options to form their children into mature, productive, adults. No one knows a child better than it's parent. Particularly not the government. So we need choices.

I think that Charter schools would be an excellent choice for the many small rural school districts that are (or will soon be) faced with the necessity of consolidating their districts for lack of students. It would give the community a chance to "keep" their school and prevent their children from having to ride miles and miles on a bus to go to school. Bussing is not a good thing when it involves a long distance. I rode such a bus so that I could go to high school. I started 17 miles from the bus stop. Then rode the bus for 35 miles just to get to school. I left the house in the morning at 6:15 and didn't get home until almost 5:00.



*p. 3*

In a rural community the school is the center of community life. It will also give the small communities a chance to revive by keeping the kids in the area as they grow. We cannot have a state that thrives if all the people live in our few cities. This state needs strong communities and I think that charter schools could help build them.

Anytime that you get local people involved in a project, they pay attention to it and watch the costs and the outcome. Since the state would check on the charter school at the end of 2 years, a community is not running away with a lot of money.

I would urge you to support SB 374.

Sincerely,

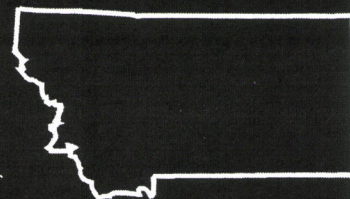
Sue Lapka

*Senate Education and Cultural Resource  
Committee*



# Understanding High School Graduation Rates in Montana

Graduation rates are a fundamental indicator of whether or not the nation's public school system is doing what it is intended to do: enroll, engage, and educate youth to be productive members of society. Since almost 90 percent of the fastest-growing and highest-paying jobs require some postsecondary education, having a high school diploma and the skills to succeed in college and the workplace are essential. Yet nationally, one-third of students—about 1.3 million each year—leave high school without a diploma, at a high cost to themselves and society at large. Unacceptably low graduation rates, particularly among poor and minority students, have been obscured for far too long by inaccurate data, calculations, and reporting, and inadequate accountability systems at the state and federal levels.

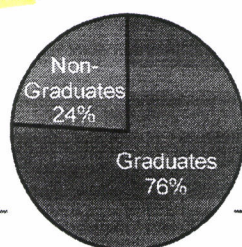


## Critical Indicator of Success

Graduation rates are an important indicator of school performance for parents, policymakers, and other concerned community members. As a result, graduation rates must be a cornerstone of high school accountability and used in decisionmaking about the targeting of resources and interventions to low-performing schools. Holding schools, districts, and states responsible for aggressively increasing graduation rates while also improving student performance is necessary to discourage schools from “pushing out” students who might not score high enough on achievement tests.

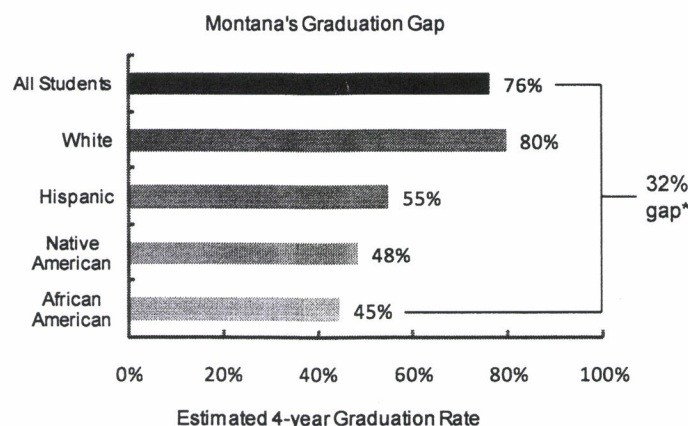
## Who's Graduating in Montana?

According to the Editorial Projects in Education Research Center, **about 76 percent of all students in Montana graduate from high school with a regular diploma in four years.**



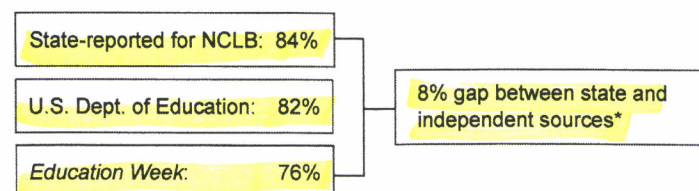
## Graduation Gaps and Inequities

There are significant graduation gaps among student subgroups. To help close these harmful achievement gaps and raise graduation rates for all students, graduation rates must be disaggregated for both reporting and accountability purposes.



## Problematic Calculations

For graduation rates to be useful, they must be reliable, consistent across states, and comparable. Although the No Child Left Behind Act of 2001 (NCLB) requires states to use a particular graduation rate calculation, poor definitions and inconsistent implementation have resulted in a range of confusing graduation rate calculations that do not provide the accurate measurement intended by the law. Over the last few years, independent researchers have confirmed that many more of the nation's youth are dropping out during high school than had been reported, and they have issued estimates that most experts agree are far more accurate than those of most government sources. In most states there is a wide variation between state-reported, federally-reported, and independently-reported rates. Recently announced federal regulations require that states implement a common formula by school year 2010–2011; however, further federal action is needed to clarify the role of graduation rates in reporting and accountability systems.



## Costs of Montana's Dropouts to Individuals and Society

There is a well-documented earnings gap between high school graduates and dropouts—an annual difference of nearly \$10,000. There is also a growing challenge for individuals with only a high school diploma to find stable, well-paying jobs. The costs of dropping out are born not just by individuals, but by the communities in which they live, and the rest of society. The potential economic benefit of improving students' academic outcomes should be a wake-up call to the importance of reforming America's high schools. Dropouts from the class of 2008 will **cost Montana almost \$830 million** in lost wages over their lifetimes.

\*Figures calculated prior to rounding.

All graduation rates are for the school year 2005–06.

For access to sources and notes please visit [http://www.all4ed.org/publication\\_material/understanding\\_HSgradrates](http://www.all4ed.org/publication_material/understanding_HSgradrates).

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## UNDERSTANDING CONSTITUTIONS & CHARTER SCHOOLS

JULY 2007

### INTRODUCTION

Charter schools are public schools, held accountable for results, open by choice, and free from most rules and regulations. Charter schools have faced their share of detractors, especially among teachers unions, school board associations, and other organizations with a vested interest in the status quo. At least twelve times in eight years, these groups have challenged the constitutionality of charters, claiming charters are either not public schools, or are unconstitutional because they are not run by school boards (and therefore, they believe, not entitled to public funds). These arguments have been repeatedly rejected by state Supreme Courts around the country, which have continually affirmed that charter schools are constitutional, are public schools, and that state legislatures have the right to enact laws that create different forms of public education. Rhetorical challenges to charter school proposals are heard daily in state capitals. These tactics can scare all but the most courageous members of a legislative assembly, but have little truth in fact. With policymakers in at least ten states considering new or revised charter legislation, it's important to take a look at the reality and understand how different kinds of chartering provisions are indeed constitutional. As Ohio is the most recent in a long line of state Supreme Courts to reject anti-charter special interest arguments, this brief will highlight this case, while providing additional information on several others.

### STATE CASES

On October 25, 2006, the Ohio Supreme Court ruled that Ohio's charter schools are legal and constitutional, continuing a national trend of state Supreme Court rulings cementing charter schools' constitutionality. What began in 2001 as an effort by a union -- the Ohio Federation of Teachers -- to eradicate Ohio's independent public schools (known as community or charter schools), ended in a resounding vindication for charters and the right of states to permit other kinds of public education programs for students. Across the country, from Colorado to Ohio, state legislatures are reclaiming their constitutional right to be involved in education by enacting legislation permitting charter schools. Lawyers argue that few constitutions give school boards the exclusive franchise on public education. Thus, lawsuits challenging the constitutionality of charter schools are nothing more than improper attempts by school boards to retain exclusive control over the education system.





## THE OHIO STORY

Since the state enacted its charter law in 1997, special interests have sought to repeal it. Turned away repeatedly by the legislature, they took their case to court. In 2001, claiming that Ohio's charter schools were unconstitutional, the defenders of Ohio's status quo and conventional public school systems (Ohio Federation of Teachers, Ohio School Boards Association, and the Ohio Congress of Parents and Teachers) filed suit challenging Ohio's charter school law. In the original complaint, the anti-choice plaintiffs asserted ten different statutory and constitutional arguments against charter schools. First and foremost, the plaintiffs argued that Section 3, Article VI of the Ohio State Constitution had been violated.<sup>1</sup> They claimed that the charter school legislation had usurped the constitutional right of local educational self-determination by allowing the creation of privately owned charter schools not authorized or governed by locally elected school boards. In other words, because individual local school boards did not govern charter schools, they were unconstitutional. The court disagreed, and ruled that the General Assembly has the power to create and modify school districts as it believes necessary, and because of that power, charter schools were in fact constitutional.

## MULTI-STATE BATTLES

*Other states before Ohio have seen similar arguments – and similar Court rulings.*

In both **New Jersey** and **Colorado**, similar rulings have been handed down, breaking the local school boards' monopolistic hold over education. In both states, the respective Supreme Courts ruled in favor of charters, determining they were constitutional.

In Colorado's *Board of Education No. 1 in the City and County of Denver v. Booth*, the Denver school board challenged Colorado's Charter Schools Act, which grants local school boards the authority to approve or disapprove a charter application, but also grants the state board of education appeals oversight. The Colorado charter statute enables aspirants whose applications are denied by local school boards to appeal to the state board of education, which has ultimate power to overturn local decisions. First the state board can force the district board to reconsider. If the district board continues to deny the application, the charter applicant may again appeal to the state board. If, on the second appeal, the state board finds that granting the charter is in the public interest, it may reverse the board's local decision.

Cordia Booth, a former Denver District public school teacher, applied to open the Thurgood Marshall Charter School for her son and other students trapped in the poorly performing Denver School District. When the Denver School Board rejected the application, she appealed to the State Board of Education. The State Board of Education ruled in favor of Booth's charter plan and ordered the local board to open her school. The Denver board sued, claiming that the appeals process gave the state board of education more power than the Colorado state constitution permits, infringing upon the state constitution's provision that the local school board "shall have control of instruction in the public schools of their respective districts."

In the 1999 *Booth* decision, the Colorado Supreme Court rejected the Denver board's position, finding that the Constitution's grant of "general supervision" over public education to the state board was broad enough to encompass the power to approve local charter schools. However, the local board's authority could not be entirely displaced. In effect, the power of the Colorado state board to approve schools on appeal was affirmed, but the court also affirmed the right of local school boards to negotiate with the applicant concerning the "issues necessary to permit the applicant to open a charter school," for example, questions of the site of the school and per-pupil funding. In the end, the prolonged court battle exhausted the applicants and the Thurgood Marshall Charter never opened. But the precedent was set, making clear that the Legislature and the State Board of Education were constitutionally entitled to involvement in the system.

In **New Jersey**, four local school districts sued the state in 1999 claiming that charter schools were unconstitutional because they did not have elected school boards, and further that they were draining money from conventional public schools. Again, the state Supreme Court ruled in favor of the charter schools, and against the monopolistic control of local school boards. Subsequent school districts sued and have lost in New Jersey's high court on similar grounds.

The same is true of courts in **California** and **Michigan** where state Supreme Courts ruled in favor of charter schools. In *Wilson v. State Board of Education*, decided in 1999, California's high court recognized that the supreme authority over education in the state rests with the Legislature. The Court ruled that the public school system is a "system of schools, which the Constitution requires the Legislature to provide." Therefore, the court said, charter schools are constitutional public schools. In Michigan there was a similar argument about constitutionality and the right to spend public funds. A coalition of unions and other charter opponents brought suit against the state. The State Supreme Court, however, disagreed. In *Council of Organizations and Others for Education About Parochialism v. Governor of Michigan* in 1997, the Michigan Supreme Court ruled that the charter schools (academies as they are called in MI) did not have to be under the direct, immediate, and exclusive control of the local board to be permissible. These charter schools, the court found, are under the "ultimate and immediate control of the state and its agents." This finding is based upon numerous facts, including that the authorizing bodies in Michigan (school districts and public universities) are public institutions over which the state exercises control; the state therefore controls their money. As a result, charter schools in Michigan were public schools and entitled to public money.

No matter what the issue, the same conclusion has been reached: charter schools are public schools and they are constitutional.



In all of these cases, local school boards (through their associations) have challenged the charter school concept and the state legislature's authority over education. Despite being veiled in a cloak of concern for "what's best for the children," these cases were little more than desperate power grabs by entities losing their total control over education. The most recent case in Ohio continues this trend of governance diversification. It highlights the important role state legislatures, not just local school boards and unions, have in ensuring the widest possible delivery of healthy educational opportunities state by state.

Such challenges in court are not atypical but standard practice for teachers unions and school boards, the two entities losing the most power with the introduction of charter schools. School board elections are routinely little more than rubber stamps for union-backed candidates. Teacher unions around the country have fought and continue to fight the introduction of charter schools. Often, the school board members they supported fall into line and take this same acrimonious position. In Ohio, the state school board and local school board association were the initiators of the lawsuit challenging charter school constitutionality, arguing only school boards had the power to create schools. The Supreme Court believed otherwise, and recognized that legislatively approved charter school authorizers are constitutional. These alternative authorizers are publicly created and publicly accountable in the same way that public school boards are accountable. Thus, the schools they authorize are public as well. Charter schools, as public schools, share public accountability for education, and thus share in the funding of public education. Challenges to this notion might be couched in constitutionality, but they are really challenges to a policy that is at odds with traditional school district/school board control. Such a concept, while once sufficient to ensure a strong public education system, has shown itself to be flawed in delivering high quality schools to the majority of children. State legislatures may create new methods to educate students and are acting constitutionally when they do so.

As long as groups have money to wage these battles, however, there will be lawsuits. And traditional education and legal analysts will provide opinions to policymakers based on case history, often hampering them from seeing how a new form of public education constitutionally can fit into the state's original system.

The founders of the fifty states saw constitutions as living documents that could provide a broad array of authorities for democratically elected state leaders. The decisions of the courts that have considered the question demonstrate that the authority with which legislatures are vested for education transcends specific school designs and can, and should, provide a vehicle to foster better educational venues for all children.

As Justice Judith Lanzinger wrote when speaking for the majority in the Ohio State Supreme Court case, "This court has held that the General Assembly has the power to create and modify school districts...by choosing to create community schools as part of the state's



program of education but independent of school districts, the General Assembly has not intruded on the powers of city school boards..." Like the Ohio opinion, court opinions in at least 12 other states have affirmed that charter schools legally may be part of a state educational system and that a General Assembly has the final say over laws governing those education systems already in existence or those yet to be created. Regardless of the particulars of a state constitution, courts consistently have ruled that wherever a state legislature is tasked with the authority to establish and fund public education, it may create systems for the establishment of other public schools without violating the constitution. State legislators or state attorneys that argue otherwise often hide their disagreement with charter schools behind a constitutional cloud, when in reality their disagreements are based on politics and policy, not the intent or direction of the law. Whether started by a school board or an independent, publicly recognized authorizer that is not a school board, the evidence is clear. With data in hand and a true concern for education, proponents can challenge the arguments against charter schools and help all states to sanction a variety of public authorizers to support and equitably fund these innovative public charter schools.

#### NOTES

1 "Provision shall be made by law for the organization, administration and control of the public school system for the state supported by public funds; provided, that each school district embraced wholly or in party within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts."

## APPENDIX

In 2006, 12 states had authorizers other than local school boards that approved and managed charter schools. An additional 8 states had strong binding appeals processes that allow applicants an open and objective avenue to seek a charter if it is initially denied by the local school board. In 2007, there are 15 states with multiple authorizers, increasing the total number from 20 to 23 states with multiple authorizers and/or a strong binding appeals process.

### *States with Multiple Authorizers*

Arizona  
Colorado  
District of Columbia  
Florida  
Indiana  
Idaho  
Michigan  
Minnesota  
Missouri  
New Mexico  
New York  
Ohio  
South Carolina  
Utah  
Wisconsin (*only in Milwaukee*)

### *States with Strong Binding Appeals Process*

California  
Florida  
New Hampshire  
New Jersey  
North Carolina  
Pennsylvania  
Tennessee  
Utah

Source: CER's 2006 *Raising the Bar on Charter School Laws  
Rankings and Scorecard*

[http://www.edreform.com/\\_upload/charter\\_school\\_laws.pdf](http://www.edreform.com/_upload/charter_school_laws.pdf)



*For more information contact:*

### THE CENTER FOR EDUCATION REFORM

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Suite 1120 • Washington, DC 20006 | Suite 220 • Bethesda, MD 20814  
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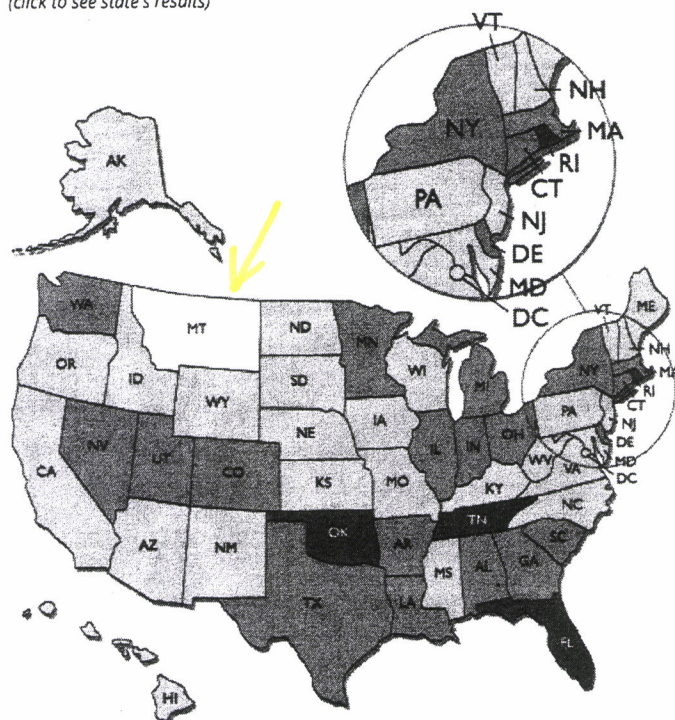
# State Teacher Policy

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## State Findings

(click to see state's results)



National Average **OVERALL D+**

[2012 Report](#)

[2011 Report](#)

Area 1 scores are for 2012.  
Other areas for 2011.

Area 1: Delivering well prepared teachers **D**  
Area 2: Expanding the pool of teachers **C-**  
Area 3: Identifying effective teachers **D+**  
Area 4: Retaining effective teachers **C-**  
Area 5: Exiting ineffective teachers **D+**

Score key

**A** **B** **C** **D** **F**

The National Council on Teacher Quality is a non-profit, non-partisan research and policy group committed to restructuring the teaching profession, led by our vision that every child deserves effective teachers.

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# State Teacher Policy

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## Montana

 **2012 Report**
 **2011 Report**

### OVERALL

F

Updated for 2012

#### Delivering Well-Prepared Teachers (2012)

F

1-A Admission into Preparation Programs ☐1-B Elementary Teacher Preparation ☐1-C Elementary Teacher Preparation in Reading Instruction ☐1-D Elementary Teacher Preparation in Mathematics ☐1-E Middle School Teacher Preparation ☐1-F Secondary Teacher Preparation ☐1-G Secondary Teacher Preparation in Science ☐1-H Secondary Teacher Preparation in Social Studies ☐1-I Special Education Teacher Preparation ☐1-J Assessing Professional Knowledge ☐1-K Student Teaching ☐1-L Teacher Preparation Program Accountability ☐

#### 2011 Results

#### Expanding the Pool of Teachers (2011)

F

2-A Alternate Route Eligibility ☐2-B Alternate Route Preparation ☐2-C Alternate Route Usage and Providers ☐2-D Part Time Teaching Licenses ☐2-E Licensure Reciprocity ☐

#### Identifying Effective Teachers (2011)

F

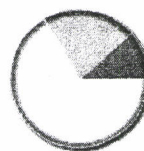
3-A State Data Systems ☐3-B Evaluation of Effectiveness ☐3-C Frequency of Evaluations ☐3-D Tenure ☐3-E Licensure Advancement ☐3-F Equitable Distribution ☐

#### Retaining Effective Teachers (2011)

D

4-A Induction ☐4-B Professional Development ☐

#### 2011-2012 Yearbook goal scores



**Meets in part:** 2-C, 3-A, 4-C, 4-I

**Meets a small part:** 1-D, 1-E, 1-L, 2-D, 3-F, 4-A, 4-E, 4-G

**Does not meet:** 1-A, 1-B, 1-C, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 2-A, 2-B, 2-E, 3-B, 3-C, 3-D, 3-E, 4-B, 4-D, 4-F, 4-H, 5-A, 5-B, 5-C, 5-D

Area 1 scores are for 2012. Other areas for 2011.

4-C Pay Scales	<input checked="" type="radio"/>	
4-D Compensation for Prior Work Experience	<input type="radio"/>	
4-E Differential Pay	<input checked="" type="radio"/>	
4-F Performance Pay	<input type="radio"/>	
4-G Pension Flexibility	<input checked="" type="radio"/>	
4-H Pension Sustainability	<input type="radio"/>	
4-I Pension Neutrality	<input checked="" type="radio"/>	
Exiting Ineffective Teachers (2011)		F
5-A Licensure Loopholes	<input type="radio"/>	
5-B Unsatisfactory Evaluations	<input type="radio"/>	
5-C Dismissal for Poor Performance	<input type="radio"/>	
5-D Reductions in Force	<input type="radio"/>	

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